

1 CLOTHILDE V. HEWLETT
Commissioner
2 MARY ANN SMITH
Deputy Commissioner
3 AMY J. WINN
Assistant Chief Counsel
4 JOSHUA SCHIEBER (State Bar No. 276397)
Senior Counsel
5 Department of Financial Protection and Innovation
One Sansome Street
6 San Francisco, California 94104
Telephone: (415) 349-1243
7 Facsimile: (415) 972-8500

8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:)
13)
14 THE COMMISSIONER OF FINANCIAL) CFL LICENSE 60DBO-46224
PROTECTION AND INNOVATION,)
15) **CONSENT ORDER**
16 Complainant.)
17 v.)
18 ECAPITAL FREIGHT FACTORING CORP.)
fka ECAPITAL LLC,)
19)
20 Respondent.)

21
22 This Consent Order is entered into between the Commissioner of Financial Protection and
23 Innovation (Complainant or Commissioner) and Respondent eCapital Freight Factoring Corp.,
24 formerly known as eCapital LLC (Respondent) and is made with respect to the following facts:

25 ///

26 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.
RECITALS

A. The Commissioner has jurisdiction over the licensing and regulation of persons and entities engaged in the business of finance lending or brokering under the California Financing Law (CFL) (Fin. Code, § 22000 et seq.).¹

B. Respondent is a Florida corporation.

C. Respondent has a principal place of business at 20807 Biscayne Blvd, Suite 203, Aventura, Florida, 33180.

D. eCapital Freight Factoring Inc is Respondent’s parent company and control person.

E. Respondent is licensed as a finance lender under the California Financing Law (CFL) (Fin. Code, § 22000, et seq.) with license number 60DBO-46224.

F. Under Financial Code section 22150, Complainant may make general rules and regulations and specific rulings, demands, and findings for the enforcement of, and within the general purposes of, the CFL.

G. Pursuant to a Commissioner’s Order on Electronic Communications, dated November 22, 2013, each CFL licensee must establish an email address for communications from the Commissioner (Designated Email Address).

H. Under California Code of Regulations, Title 10, Section 1422.4 (Regulation 1422.4), which went into effect on October 1, 2021, all CFL licensees were required to transition to the Nationwide Multistate Licensing System and Registry (NMLS) by December 31, 2021. On December 16, 2021, Complainant extended the deadline to transition to NMLS to March 15, 2022. On March 7, 2022, Complainant again extended the deadline to transition to NMLS to March 31, 2022.

I. Complainant provided notice of this requirement to Respondent – via email to the Designated Email Address of each CFL licensee on July 20, 2021, September 16, 2021, October 14, 2021, November 8, 2021, and December 16, 2021. Complainant also provided notice via email to

¹ Cal. Fin. Code § 22000, *et seq.* All subsequent statutory references are to the California Financial Code unless otherwise specified.

1 each CFL licensee that had not yet transitioned to NMLS, including Respondent, on March 7, 2022,
2 and again via email and mail on March 28, 2022. Complainant provided further notice of this
3 requirement over the telephone – Complainant made at least two calls to the designated telephone
4 number provided by each CFL licensee, including Respondent – between February 1 and March 15,
5 2022.

6 J. Complainant determined that Respondent was in violation of Regulation 1422.4 and
7 had not transitioned management of its CFL license to NMLS as of July 22, 2022. Accordingly,
8 Complainant issued a Citation on July 22, 2022 pursuant to Financial Code section 22707.5,
9 subdivision (a). The Citation included an order to correct the violation and an order to pay an
10 administrative fine in the amount of \$2,500.00 to the Commissioner by September 20, 2022.

11 K. Complainant served the Citation on Respondent via certified mail on July 22, 2022
12 and by electronic mail at Respondent’s Designated Email Address on July 22, 2022.

13 L. On or about June 6, 2023, the Commissioner issued an Accusation in Support of
14 Order Revoking License Pursuant to Financial Code Section 22714.

15 M. On June 9, 2023, the Commissioner served the Accusation on Respondent via
16 certified mail and by electronic mail at Respondent’s Designated Email Address and on
17 Respondent’s attorney.

18 N. On or about June 16, 2023, Respondent acknowledged receipt of the Accusation.

19 O. On or about June 16, 2023, Respondent requested the transition of license number
20 60DBO-46224 to NMLS which, as of the date of this Consent Order, remains in process.

21 P. On or about June 16, 2023, Complainant Received a check in the amount of \$2,500
22 from eCapital Freight Factoring Inc., Respondent’s parent company.

23 Q. The Commissioner finds that entering into this Consent Order is in the public interest
24 and consistent with the purposes fairly intended by the policies and provisions of the CFL.

25 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
26 forth herein, the parties agree as follows:

27 **II.**

28 **TERMS AND CONDITIONS**

1 1. Purpose. The parties intend to resolve this matter for the purpose of judicial economy
2 and expediency and without the uncertainty and expense of a hearing or other litigation.

3 2. Order Rescinding Accusation. The Commissioner hereby rescinds the Accusation
4 which had been issued on June 6, 2023 (Accusation).

5 3. Transition to NMLS. Respondent shall complete the transition of its license to
6 NMLS as required by Regulation 1422.4 within 30 days of the effective date of this Consent Order
7 as defined in paragraph 25 if it has not already done so.

8 4. Failure to Transition License to NMLS. If Respondent fails to comply with
9 paragraph 3, the Commissioner may summarily revoke Respondent’s license.

10 5. Waiver of Notice and Hearing Rights. Respondent acknowledges the Commissioner
11 is ready, willing, and able to proceed with a hearing on the Accusation. Respondent hereby waives
12 the right to any notice or hearings, and to any reconsideration, appeal, or other right to review which
13 may be afforded pursuant to the CFL, the California Administrative Procedure Act, the California
14 Code of Civil Procedure, or any other provision of law. By waiving such rights, Respondent
15 effectively consents to this Consent Order becoming final.

16 6. Full and Final Resolution. The parties hereby acknowledge and agree that this
17 Consent Order is intended to constitute a full and final resolution of the violations described herein,
18 and that no further proceedings or actions will be brought by the Commissioner in connection with
19 these matters except under the CFL or any other provision of law, excepting therefrom any
20 proceeding to enforce compliance with the terms of this Consent Order.

21 7. Failure to Comply with Consent Order. Respondent agrees that if it fails to comply
22 with the terms of this Consent Order, the Commissioner may, in addition to all other available
23 remedies it may invoke under the CFL, summarily revoke the CFL license of Respondent.
24 Respondent waives any notice and hearing rights to contest such summary revocation which may be
25 afforded under the CFL, the California Administrative Procedure Act, the California Code of Civil
26 Procedure, or any other provision of law in connection therewith.

27 8. Information Willfully Withheld or Misrepresented. This Consent Order may be
28 revoked, and the Commissioner may pursue any and all remedies available under law against

1 Respondent if the Commissioner discovers that Respondent knowingly or willfully withheld or
2 misrepresented information used for and relied upon in this Consent Order.

3 9. Future Actions by Commissioner. If Respondent fails to comply with the terms of the
4 Consent Order, the Commissioner may institute proceedings for any and all violations otherwise
5 resolved under this Consent Order. The Commissioner reserves the right to bring any future actions
6 against Respondent, or any of its partners, owners, officers, shareholders, directors, employees, or
7 successors for any and all unknown violations of this CFL.

8 10. Assisting Other Agencies. Nothing in this Consent Order limits the
9 Commissioner’s ability to assist any other government agency (city, county, state or federal) with
10 any prosecution, administrative, civil or criminal action brought by that agency against Respondent
11 or any other person based on any of the activities alleged in this matter or otherwise.

12 11. No Presumption Against Drafter. Each party acknowledges that it has had the
13 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
14 intend no presumption for or against the drafting party will apply in construing any part of this
15 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
16 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
17 language of a contract should be interpreted most strongly against the party who caused the
18 uncertainty to exist.

19 12. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
20 has had the opportunity to receive independent advice from an attorney(s) and/or representatives
21 with respect to the advisability of executing this Consent Order.

22 13. Headings. The headings to the paragraphs of this Consent Order are inserted for
23 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
24 the provisions hereof.

25 14. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
26 interest.

27 15. Reliance. Each of the parties represents, warrants, and agrees that in executing this
28 Consent Order, it has relied solely on the statements set forth herein and the advice of its own legal

1 counsel, if represented. Each of the parties further represents, warrants, and agrees that in executing
2 this Consent Order it has placed no reliance on any statement, representation, or promise of any
3 other party, or any other person or entity not expressly set forth herein, or upon the failure of any
4 party or any other person or entity to make any statement, representation, or disclosure of anything
5 whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in
6 any way fraudulently induced to execute this Consent Order; and (2) to preclude the introduction of
7 parol evidence to vary, interpret, supplement, or contradict the terms of this Consent Order.

8 16. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
9 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
10 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
11 provision. No waiver by either party of any breach of, or of compliance with, any condition or
12 provision of this Consent Order by the other party will be considered a waiver of any other condition
13 or provision or of the same condition or provision at another time.

14 17. Full Integration. This Consent Order is the final written expression and the complete
15 and exclusive statement of all the agreements, conditions, promises, representations, and covenants
16 between the parties with respect to the subject matter hereof, and supersedes all prior or
17 contemporaneous agreements, negotiations, representations, understandings, and discussions
18 between and among the parties, their respective representatives, and any other person or entity, with
19 respect to the subject matter covered hereby.

20 18. Governing Law. This Consent Order will be governed by and construed in
21 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court
22 and thereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
23 forum to the maintenance of such action or proceeding in such court.

24 19. Counterparts. This Consent Order may be executed in one or more separate
25 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
26 together constitute a single document.

27 20. Effect Upon Future Proceedings. If Respondent applies for any license, permit or
28 qualification under the Commissioner’s current jurisdiction, or are the subject of any future action by

1 the Commissioner to enforce this Consent Order, then the subject matter hereof shall be admitted for
2 the purpose of such application(s) or enforcement proceeding(s).

3 21. Voluntary Agreement. Respondent hereby enters into this Consent Order voluntarily
4 and without coercion and acknowledges that no promises, threats, or assurances have been made by
5 the Commissioner or any officer, or agent thereof, about this Consent Order. The parties each
6 represent and acknowledge that he, she or it is executing this Consent Order completely voluntarily
7 and without any duress or undue influence of any kind from any source.

8 22. Notice. Any notice required under this Consent Order shall be provided to each party
9 at the following addresses:

10 To Respondent: eCapital Freight Factoring Corp. fka eCapital LLC
11 Kenneth Judd
12 20807 Biscayne Blvd., Suite 203
13 Aventura, FL 33180
Ken.Judd@ecapital.com

14 Paul Hastings LLP
15 c/o Lawrence Kaplan
16 2050 M Street, N.W.
17 Washington, D.C. 20036
18 LawrenceKaplan@paulhastings.com

19 To the Commissioner: Joshua Schieber, Senior Counsel
20 Department of Financial Protection and Innovation
21 One Sansome Street, Suite 600
22 San Francisco, California 94104
Josh.Schieber@dfpi.ca.gov

23 23. Signatures. A fax or electronic mail signature shall be deemed the same as an
24 original signature.

25 24. Public Record. Respondent hereby acknowledges that the Consent Order is and will
26 be a matter of public record.

27 25. Effective Date. This Consent Order shall become final and effective when signed by
28 all parties and delivered by the Commissioner’s agent via e-mail to Respondent at the following
email address: LawrenceKaplan@paulhastings.com.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

26. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Consent Order and undertake the obligations set forth herein.

Dated: July 21, 2023
Sacramento, California

CLOTHILDE V. HEWLETT
Commissioner of Financial Protection and Innovation



By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: July 11, 2023

eCapital Freight Factoring Corp

By _____
Kenneth Judd, Chief Executive Officer